

assume that the overtime requirements of section 7 of the Act have been satisfied if computation is made as follows:

(1) Assume first that the overlapping hours are to be counted as hours worked only in the "old" workweek and not in the new; compute straight time and overtime compensation due for each of the 2 workweeks on this basis and total the two sums.

(2) Assume now that the overlapping hours are to be counted as hours worked only in the new workweek and not in the old, and complete the total computation accordingly.

(3) Pay the employee an amount not less than the greater of the amounts computed by methods (1) and (2).

(b) *Application of rule illustrated.* Suppose that, in the example given in § 778.301, the employee, who receives \$5 an hour and is subject to overtime pay after 40 hours a week, worked 5 hours on Sunday, March 7, 1965. Suppose also that his last "old" workweek commenced at 7 a.m. on Monday, March 1, and he worked 40 hours March 1 through March 5 so that for the workweek ending March 7 he would be owed straight time and overtime compensation for 45 hours. The proposal is to commence the "new" workweek at 7 a.m. on March 7. If in the "new" workweek of Sunday, March 7, through Saturday, March 13, the employee worked a total of 40 hours, including the 5 hours worked on Sunday, it is obvious that the allocation of the Sunday hours to the old workweek will result in higher total compensation to the employee for the 13-day period. He should, therefore, be paid \$237.50 ( $40 \times \$5 + 5 \times \$7.50$ ) for the period of March 1 through March 7, and \$175 ( $35 \times \$5$ ) for the period of March 8 through March 13.

(c) *Nonstatutory obligations unaffected.* The fact that this method of compensation is permissible under the Fair Labor Standards Act when the beginning of the workweek is changed will not alter any obligation the employer may have under his employment contract to pay a greater amount of overtime compensation for the period in question.

[33 FR 986, Jan. 26, 1968, as amended at 46 FR 7314, Jan. 23, 1981]

#### ADDITIONAL PAY FOR PAST PERIOD

#### § 778.303 Retroactive pay increases.

Where a retroactive pay increase is awarded to employees as a result of collective bargaining or otherwise, it operates to increase the regular rate of pay of the employees for the period of its retroactivity. Thus, if an employee is awarded a retroactive increase of 10 cents per hour, he is owed, under the Act, a retroactive increase of 15 cents for each overtime hour he has worked during the period, no matter what the agreement of the parties may be. A retroactive pay increase in the form of a lump sum for a particular period must be prorated back over the hours of the period to which it is allocable to determine the resultant increases in the regular rate, in precisely the same manner as a lump sum bonus. For a discussion of the method of allocating bonuses based on employment in a prior period to the workweeks covered by the bonus payment, see § 778.209.

#### HOW DEDUCTIONS AFFECT THE REGULAR RATE

#### § 778.304 Amounts deducted from cash wages—general.

(a) The word "deduction" is often loosely used to cover reductions in pay resulting from several causes:

(1) Deductions to cover the cost to the employer of furnishing "board, lodging or other facilities," within the meaning of section 3(m) of the Act.

(2) Deductions for other items such as tools and uniforms which are not regarded as "facilities."

(3) Deductions authorized by the employee (such as union dues) or required by law (such as taxes and garnishments).

(4) Reductions in a fixed salary paid for a fixed workweek in weeks in which the employee fails to work the full schedule.

(5) Deductions for disciplinary reasons.

(b) In general, where such deductions are made, the employee's "regular rate" is the same as it would have been if the occasion for the deduction had not arisen. Also, as explained in part 531 of this chapter, the requirements of the Act place certain limitations on